

**Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure**

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Serial No.: 10/721,698

Confirmation No.: 6282

Filed: November 25, 2003

For: HEAT EXCHANGE APPARATUS, SYSTEM, AND METHODS REGARDING SAME**Remarks**

The Final Office Action mailed December 14, 2005 has been received and reviewed. No claims have been amended, cancelled, or added. Therefore, the pending claims are claims 1-9, 13-19, 28-32 and 36. Claims 10-12, 20-27, 33-35, and 37-39 have been withdrawn from consideration but are still pending in the present application, and as indicated by the Examiner, claims will be rejoined in the application as appropriate. Reconsideration and withdrawal of the rejections are respectfully requested in view of the remarks provided herein.

**The 35 U.S.C. §103 Rejection**

The Examiner continues to reject claims 1-4, 6-8, 13-15, and 17-18 under 35 U.S.C. §103(a) as being unpatentable over Bardenheier (U.S. Patent No. 4,782,888) and JP 2002-30717 (translation provided by Examiner). Further, claims 5, 16, 28-31 and 36 continue to be rejected as being unpatentable over the same art, and further in view of FR 2381869 and Sherman (U.S. Patent 1,553,639). Yet further, claims 9, 19 and 32 continue to be rejected as being unpatentable over the same art and further in view of Clancy (U.S. Patent 2,364,130), or JP 88730 (Fig. 3), or JP 9-229574 (Figs. 3-5).

The Examiner has indicated that the original "DECLARATION OF PRIOR INVENTION TO OVERCOME CITED PATENT UNDER 37 C.F.R. §1.131" filed 27 September 2005 (hereinafter "Original Declaration") was ineffective to overcome the JP 2002-30717 reference. In particular, the Examiner alleges that Applicant has failed to show conception of the claimed subject matter before the effective date of the reference (i.e., 31 January 2002).

Applicant respectfully traverses the Examiner's rejections and any allegations with respect to such references cited and applied to the present invention, as well as the Examiner's allegation that Applicant's Original Declaration has failed to show conception of the claimed subject matter before the effective date of the reference. However, to move this case to issuance, Applicant provides a new revised "DECLARATION (REVISED) OF PRIOR INVENTION TO OVERCOME CITED PATENT UNDER 37 C.F.R. §1.131" (hereinafter "Revised Declaration")

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that has been executed by the inventor to attempt to overcome the Examiner's objections to the Original Declaration.

It is submitted that the Revised Declaration clearly evidences that the inventor conceived the invention as recited in the pending claims prior to the effective date of the JP 2002-30717 reference (i.e., the publication date of 31 January 2002), that such conceived invention was communicated to Mr. Anderson as set forth in the Declaration of Laurence A. Anderson, and that this conception was coupled with due diligence from prior to the effective reference date (i.e., the publication date of 31 January 2002) to the filing date (i.e., 27 November 2002) of the provisional application Serial No. 60/429,160 (e.g., constructive reduction to practice) to which the present application claims priority. An element by element presentation of such evidence is provided in the Revised Declaration.

As such, the JP 2002-30717 reference is removed as a reference against the rejected claims. As all of the pending claims 1-9, 13-19, 28-32 and 36 have been rejected using the JP 2002-30717 reference, such claims are not obvious in view of the cited references. It is respectfully requested that the rejection be withdrawn.

In view of the removal of the JP 2002-30717 reference, detailed comment on the remainder references is not provided. However, the citation of such numerous references to make obvious one or more claims of the present invention is clearly hindsight reconstruction of Applicant's invention.

If for some reason, the Revised Declaration is still considered to fail to be effective to overcome the JP 2002-30717 reference, Applicants request that Applicants' representative, Mark J. Gebhardt, be contacted to discuss what additional evidence and/or Declarations is necessary.

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It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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14 Feb 2006

Date

By: 

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 14 day of FEBRUARY, 2006, at 2:25 pm (Central Time).

By: Name: Sandy Truehart